

# LEGAL RISKS FOR THE BUSINESS OF PERSERO'S STATE OWNED ENTERPRISE (SOE) AND THEIR IMPLICATIONS FOR STATE FINANCE

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**Abstract.** This research focuses on legal aspects, notably the risks faced by the management of state-owned enterprises which result in losses to state finances and might potentially cause cases of corruption. The constraints experienced by the Directors of SOE are induced by the established regulation of legal norms in the SOE Law and the Limited Liability Company Law. They result in the ineffectiveness of SOE Directors in the development of Indonesian economy. The study is scrutinises risk management, which enforces normative juridical methods based on primary legal materials. The research findings show that the laws regulating SOEs' activities prove discriminatory when compared to those for privately-owned enterprises. Moreover, they hinder integration of the economy into the dynamic global business environment, even though these types of business entities are the primary economic agents in the national economic development. Coordination of efforts is needed for harmonization of laws and regulations, so that the business risks carried out by the Directors of SOE should be very low and ensure legal certainty in managing business.

**Keywords:** business risks, directors, state financial losses

## INTRODUCTION

Economic development is a process intended to improve people's welfare on an ongoing basis. For this reason, state activities are required to focus on carrying out all economic activities through business entities, both private and governmental, one of which is in the form of a Persero State-Owned Enterprise (SOE). SOE as a business entity regulated by Law no. 19 as of 2003 (SOE Law) is one of the pillars of the national economy, which possesses the same management structure as a private entity in the form of a Limited Liability Company (LLC) which is regulated in Law no. 40 as of 2007.

The existence of SOEs and private entities often raises legal issues when SOEs and private entities do the same business, but the legal risks that arise are vary to a great extent as far as fairness and legal certainty are concerned in the business they run. In fact, legal risks often emerge for the Directors of SOEs where the legal treatment is not the same as the Directors of an LLC. Legal issues are getting more complicated when SOE Directors are overshadowed by fears of the emergence of 'state losses', while LLC Directors are not like that. It might be due to the concept of capital owned by SOE, partly or wholly owned by the state through direct participation from separated state assets. This situation shows that the state participates in business activities similarly to those carried out by other private companies.

The business world is full of initiatives, strategies and quick steps full of competition, speed and accuracy in decision making. The business world is also not free from all the risks that surround it, which can even lead to risks that cannot be predicted in advance. This means that all company organs, the General Meeting of Shareholders (GMS), the Board of Commissioners and the Board of Directors, must think and act according to business law (Makawimbang, 2014). Even though SOE shareholders are the government, including its Commissioners, the business steps carried out by SOE still refers to professional principles or attitudes. Businesses run by the Government from a legal standpoint can be justified as long as they are regulated in the SOE Law as a basis for the state to provide economic development policies.

From the description above, the two formulations of the problem that are being scrutinised in this research are, firstly, why the drafters of the law failed to harmonize the law regarding legal norms that contain contradictions in the management of SOEs so as to avoid ambiguity in their management. Secondly, how to formulate state loss norms that can provide certainty and fairness for Directors in managing SOEs.

## MATERIALS AND METHODS

The research uses a normative and philosophical juridical approach using primary legal materials, namely the SOE Law, LLC Law, and the State Treasury Law. In addition, secondary legal materials are used which provide explanations on primary legal materials in the form of books on business law, corporations, legal philosophy, state finance, Constitutional Court Decisions, Supreme Court Decisions and other Judicial Decisions as well as various other information obtained through business law journals and the mass media.

Conducting a legal risk analysis in business conducted by SOEs cannot be separated from the theoretical basis of the emergence of business based on contracts (agreements) as the underlying law. Whereas the principle of freedom of contract does not have unlimited meaning, but is limited by the responsibilities of the parties, so that freedom of contract

as a principle is characterized as a principle of freedom of responsible contracts. That is, there is a balanced legal position of the parties and provides benefits for both contracting parties. When a business is to be run by the parties, the main element needed is order as the goal of the business law itself. Adherence to order guarantees that various social needs of the society are properly addressed. The emergence of order is based on the necessity to behave in a certain way in the form of rules (norms), especially legal norms formulated in laws to regulate parties in the business being carried out, as Thomas Aquinas said that law is a rational thought order for the common good (Ibrahim, 2009).

Nowadays, in the sphere of business, a theory, which is often referred to as the Business Judgment Rule, arose. It is the subject is often a serious topic of discussion and has even become a legal basis for taking judicial decisions. The Business Judgment Rule is a theory or principle of running a business that teaches that the decision of the Board of Directors regarding the company's activities cannot be contested by anyone, even if the decision in the future is wrong and detrimental to the company, as long as the decision meets the requirements, among others, has been made in good faith, done with the aim in accordance with applicable law, and is based on due care and is worthy of being trusted as in the best interest of a company (Fuady, 2002).

In business, the understanding of entity theory is inseparable from the vision of a business entity as the one that is separate from the owner, so that the relationship between business owners and managers is an agent relationship with principals who are bound by a contract. Everything that becomes the responsibility of the agent (management) is contained in the contract which at the end of each period must be accountable to the principal (GMS). Furthermore, one can understand a situation called the Internal Control System (ICS) as a reference for assessing business progress, which emphasizes, 'Internal control is broadly defined as a process effected by an entity's board of directors, management, and other personnel, designed to provide reasonable assurance regarding the achievement of objectives in the following categories : effectiveness and operations, reliability of financial reporting and compliance with applicable laws and regulations'.

In the ICS Internal Control Framework, internal control includes five categories of controls designed and implemented by management to provide assurance that management control objectives will be met. Five components of internal control, namely: (i) control environment, (ii) risk assessment, (iii) control activities, (iv) information and communication, and (v) monitoring. One component of the internal control system is risk assessment. All business entities, both private and state-owned enterprises, face various risks from external and internal sources that must be considered by the Board of Directors. Economic, industry, regulatory, and operational conditions are constantly changing. Management is challenged to develop mechanisms to identify emerging risks. Various risks can be simplified into two groups, external risks, namely, economic, natural conditions, political, and social. Internal risk conditions, notably infrastructure, personnel, process, and technology.

## RESULTS AND DISCUSSION

**State Interests in Business.** Indonesia with an area of more than 1,905 million km<sup>2</sup> and a population of more than 273 million people, shows the fact how large the coverage area and population must be managed in order to provide prosperity. The role of SOE as a business

unit is certainly not enough to provide protection and welfare in various economic aspects needed for the progress of the nation, as required by the constitution (1945 Constitution).

Economic advancement is not possible without legal objectives in terms of certainty and justice that can be obtained by every citizen. Development is carried out comprehensively and touches all aspects of people's lives, not only focusing on one particular area such as the economy. Economic development must be accompanied by mutually reinforcing efforts with the development of other fields, particularly the legal sector. If this is the case, business law, also often called economic law, becomes two sides of a coin that cannot be separated. The connection between the two fields is confirmed by Hartono (Hartono, 1982) by stating, '... thinking in the economic field also changes and determines the foundations of the legal system in question, then the enforcement of appropriate legal principles will also facilitate the formation of the desired economic structure, on the other hand the enforcement of the principles of legal principles that are not appropriate will actually hinder the creation of the economic structure that aspires to be.' Therefore, laws that are built in the face of very rapid economic progress and development are not a stand-alone problem. The economy is indeed the backbone for social welfare. However, social justice which is to be realized through economic progress, can only be carried out through well-formulated legal institutions.

The meaning of law in economics becomes the deepest meaning to determine what is permissible and what is not, as emphasized by Marcus T. Cicero (Ibrahim and Sewu, 2004), 'law is the highest reason that is instilled by nature in humans. To determine what is allowed and what is not allowed to be done'. When the state has an interest in doing business, it is only natural that the business being run requires profit. Because talking about business is talking about how to get a profit, as emphasized by Burton (Burton, 1996) that the word 'business' is broadly defined as all business activities carried out by people or entities on a regular and continuous basis, in the form of activities of procuring goods or services. as well as facilities to be traded, exchanged, or leased with the aim of making a profit.

Problems arise when SOEs do not only gain profits in the business they run. Then, the term 'state loss' emerged as a result of the business being run, giving rise to at least two main questions. First, does a business run by the state have to make a profit? In other words, can the state suffer losses from the business it runs? The next question is, if the state suffers a loss, who should be found guilty and legally responsible for the losses incurred?

Reflecting on the emerging cases, the two major issues are of interest to research. Until now, academics as well as practitioners in the fields of economics and law, continue to discuss the issue of order in state-run businesses through SOE institutions on the basis of SOE Law No. 19 as of 2003. Thus, legal risks in businesses run by SOEs are the exploratory agenda in this paper. Moreover, there are no norms in the law that can provide protection for the Directors of SOE, even though the Directors have carried out their business activities on the basis of good faith and good business principles decided by the Directors of SOE.

However, since the issuance of Government Regulation (GR) No. 23 as of 2022 further emphasizes that it is important to understand the business decision-making doctrine. Article 27 of GR No. 23 as of 2022 as a change from GR no. 45 of 2005 has confirmed the meaning of the business judgment rule that can be used in practice, with a very firm formulation. It is stated that each member of the Board of Directors cannot be held responsible for the losses of SOE if they can prove that: (i) the loss was not due to their fault or negligence; (ii) has

carried out the Management in good faith and prudence for the benefit and in accordance with the aims and objectives of the SOE; (iii) does not have a direct or indirect conflict of interest in Management Actions that result in losses; and (iv) has taken action to prevent the loss from arising or continuing.

**Risks in Business Management.** Any business run by SOE (including private companies) can be ascertained as those with no risk. Risk is an unavoidable part of every business that is run. When the business is run, the parties understand and agree on the essence of the business to be carried out. That is why, the law means that the parties are bound by a promise, which in law is known as ‘pacta sunt servanda’ as the fundamental principle underlying the birth of an agreement.

This principle which comes from Latin means that promises must be kept, so that in positive law the norm formulation becomes, ‘every agreement made legally applies as a law for those who make it’. In greater detail, the principle referred to is seen in the provisions of Article 1338 of the Civil Code which states, ‘all agreements made in accordance with the law apply as laws for those who make them’ (para 1). Then, ‘the agreement cannot be withdrawn other than with the agreement of both parties, or for reasons determined by law’ (para 2).

From a legal standpoint, risk is defined as anything that causes an event to become uncertain and detrimental. Legal risk is a risk faced by business organizations related to legal issues, generally the result of non-compliance with applicable laws and regulations. For example, the risk of a contract that is not understood about the rights and obligations of each party. The result is the emergence of monetary losses such as cancellation of goods orders, as well as non-monetary losses such as the company’s reputation in the public eye.

The easiest risk to explain is the risk of inconsistent public policies. Public policies that have broad implications are always made using legal instruments. The law that is formulated often changes according to the interests of the drafters (makers) of the rules. Such risks are often called political risks, which are then commonly called legal politics. In addition to the risks above, other risks may arise, such as the risk of natural conditions, namely floods, fires, earthquakes which result in damage to buildings, resulting in the inability to obtain raw materials or loss of workers (Fuady, 2002).

According to the researcher, legal risk is a priority that must be understood because legal risk will have an impact on situations that want conditions that are certain and fair. How is it possible that business will run well and smoothly, if the law does not provide certainty and justice for the business world. It is expedient that the purpose of law for economic sustainability in the form of justice, certainty, benefit and order should be a business benchmark that must be practiced so that SOEs can be trusted.

### **Understanding of Business in Judge’s Decisions.**

**1. Karen agustiawan case.** The case of Karen Agustiawan is a business case that contains quite a big risk for SOE Pertamina. The case began when Pertamina’s subsidiary led by Karen invested in oil drilling in Australia’s Manta Gummy Block in 2009. Then, Karen felt she was being criminalized over the investment business, which was suspected of violating procedures in Pertamina’s acquisition process. Even though all procedures have been carried out with the approval of the Commissioner up to due diligence to prevent risks (Irianto, 2020).

The risk arises where the public prosecutor demands a sentence of 15 years in prison

and a fine of 1 billion because it is considered to have caused losses to the state's finances of IDR 568 billion. The business risks faced by Karen show that there is legal uncertainty from the law governing the legal status of SOE, namely whether SOE finance is the scope of state finance or not. With regard to the Karen case, two questions arise. Firstly, what is the essence of the formation of SOE Pertamina? Secondly, is Pertamina's business subject to LLC Law No. 40/2007 or not? Under SOE Law No. 19 as of 2003, SOEs have three types of concern, firstly, providing great benefits to the community; secondly, balancing private power; thirdly, it is a source of state revenue in the form of taxes and dividends. Two of these three interests provide a real essence that SOE is no different from a private business entity called LLC. Taxes paid by state-owned enterprises and the private sector are equally the mainstay of the government to fill the state budget coffers.

If so, Pertamina's SOE business is aimed at seeking profits for the state. The founders of the SOE Law realized the essence of forming SOEs, which is read in Article 2 paragraph 1 of the SOE Law), namely pursuing profits and pioneering business activities that the private sector and cooperatives could not yet implement. In other words, Pertamina is philosophically managed professionally like a private company (PT). The word 'professional' connotes that management is carried out with a strict monitoring and control mechanism. The existence of the 'Commissioner' and 'GMS' is the same as the organs in the Company Law.

The essence of SOE Pertamina legally should have understood that 'separated wealth' as SOE capital is not interpreted as 'state wealth' but becomes 'SOE wealth' or 'Pertamina wealth'. Because state-owned companies are in the form of limited liability companies whose capital is divided into shares. Against this condition, Rajagukguk (2019) emphasized in his writings that a legal entity has its own assets, because legal entities as legal subjects have rights and obligations like humans, can also sue and be sued and have their own assets. Then, the legal issue is, does SOE Pertamina have to comply with the Company Law? It turns out that Article 3 of the SOE Law states that other statutory provisions apply to SOE, which later in the explanation of the SOE Law mentions the LLC Law and that it is managed according to the principles of a healthy company. However, when business risks arise and SOE Pertamina (or Pertamina's subsidiary) suffers losses, why are the Directors sued because they have 'harmed state finances?'

The Karen case gives legal meaning that the essence or existence of SOEs seems meaningless. SOE capital is again interpreted as 'state wealth'. In fact, from a juridical point of view, the included capital should no longer be the property of the participating party, but the property of the SOE company itself. That is, the law has stated that there is a separation of wealth between the wealth of shareholders and the company. With this understanding, 'detriment to state finances' as an element of corruption is regulated in the Law on Corruption Crimes No. 31 of 1999 which was amended by Law No. 20 of 2001, should no longer apply because the legal principles of SOE business are subject to the Company Law.

The principle of submission is known from the desire for SOEs to become independent legal entities and have assets separate from their owners (including being professionally managed according to its business objectives. which is illustrated in the elucidation of Article 91 of the SOE Law). Third parties are not allowed to interfere in the management of SOEs. As long as the Board of Directors makes legal decisions based on the business judgment rules doctrine, they can be protected from criminal charges. Based on the business judgment rules, the

decision of the Board of Directors as long as it is considered a business decision, has good intentions, there is no conflict of interest, the law will protect it. Supreme Court Decision Number 121 K/Pid.Sus/2020 finally won Karen. The Supreme Court stated that Karen was proven to have committed the actions charged in the public prosecutor's indictment, but her actions did not constitute a crime. Then releasing Karen from all lawsuits (*ontslag van alle rechtsvervolging*).

According to the business judgment rule doctrine, a judge can not adjudicate on decisions or legal actions that have been taken by the Board of Directors. The judge must ask for the opinion of an expert in his field regarding the correctness of the legal action decided by the Board of Directors. When SOEs make a profit, the profit will return to the state through taxes. Then, what if the business continues to lose money? That is a business risk that must be borne. So, the understanding is not to judge when a loss occurs then it is considered detrimental to the state and is punished for corruption. Loss and profit are part of the business itself. The business balance every year can be a loss and you don't pay taxes.

2. *Garuda case financial statements*. Garuda in 2018 created a sensation. Two Garuda commissioners were reluctant to sign the Financial Statements (FS) because they did not agree with the management's decision. This situation raises two questions, first, does the Commissioner's disagreement with signing the financial statements make the financial statements legally invalid? Second, if the FS is valid without being signed by the commissioner, how far is the legal responsibility for Garuda FS?

The legal side is how the roles and responsibilities of the Commissioner are in the Company Law and the SOE Law. Garuda as a SOE has become a big concern of the public regarding flight services to consumers. It is known that FS has been audited by an Accountant Office based on financial accounting standards, but a problem arises with receivables from cooperation transactions with other parties. Then, trying to find a solution, suggest the Commissioners and Directors seek the views of competent experts to solve it. The commissioner as an important organ in the company according to the norms of Article 66 of the Limited Liability Company Law plays a strategic role in carrying out the supervisory function, including reviewing FS before submitting it to the GMS. FS becomes a very important legal issue to be accounted for. Because if the FS is not true, the Company Law emphasizes that Directors and Commissioners must accept the legal consequences of joint responsibility for the aggrieved party, as stated in Article 69 paragraph 3 of the Company Law.

This arrangement is also clearly stated in Article 23 paragraph (2) of the SOE Law that reports must be signed by the directors and commissioners to obtain approval from the GMS. However, it may not be signed as long as there are written reasons. Legal problems arose when Article 67 paragraph (2) of the Company Law stated that if the directors and commissioners did not sign the FS, those concerned must provide written reasons. That is, is it interpreted that FS is deemed to agree (even if the written reasons are not agreed) and then proceed to seek approval from the GMS? These provisions seem contradictory because the law does not explain them, so that legal uncertainty arises from the FS that has been prepared. Commissioners as an organ that is deliberately set up to carry out supervision, has an important legal meaning so that the company runs on the right track. Moreover, the commissioners are assisted by an audit committee in accordance with Article 121 UUPT. In the researcher's opinion, the law deliberately forms commissioners with clear legal

responsibilities. However, what is the use of the commissioner if the FS is not signed and then deemed approved, according to Article 67 paragraph (3). This rule seems to negate the existence of the Commissioner.

**Analysis of State Losses.** State losses have been formulated in three laws, namely (i) Law no. 1 of 2004 concerning the State Treasury, (ii) Law no. 15 of 2006 concerning the Supreme Audit Agency (BPK), and (iii) Law no. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (Tipikor Law) on the Elucidation of Article 32 paragraph (1). However, the meaning of state finance appears in Law no. 17 of 2003 concerning State Finance. Article 1 number 22 of the State Treasury Law and Article 1 number 15 of the BPK Law state the same understanding of State Losses, namely: “State/Regional Losses are a shortage of money, securities, and goods, the real and definite amount as a result of acts against the law, whether intentional or nor negligent.”

Whereas Article 32 paragraph (1) of the Corruption Law states, “In the event that investigators find and are of the opinion that one or more elements of a criminal act of corruption do not have sufficient evidence, whereas in fact there has been a loss of state finances, the investigator shall immediately submit the case files resulting from the investigation to the Prosecutor.” State Attorney to carry out a civil lawsuit or to be handed over to the agency that is disadvantaged to file a lawsuit’. Furthermore, the elucidation of Article 32 paragraph (1) of the Corruption Law states that what is meant by “there has actually been a loss of state finances is a loss whose amount can already be calculated based on the findings of the competent authority or accountant”.

In fact, there are two terms related to state losses, with 3 types of designations, (i) state financial losses; (ii) state losses; and (iii) losses to the country’s economy. All three certainly have different legal meanings. Even with regard to tax issues, the term ‘loss on state revenue’ appears. Therefore, the researcher does not explain in detail regarding the 4 terminologies in question. The important point is to understand that the country has experienced financial losses in the country.

Furthermore, the Supreme Court Circular Letter (SEMA) No. 4 of 2016 concerning the Enforcement of the Formulation of the Results of the 2016 Supreme Court Chamber Plenary Meeting as a Guideline for the Implementation of Duties for the Court, which expressly states that the agency authorized to declare whether there has been a loss of state finances is the Supreme Audit Agency which has constitutional authority while other agencies Other agencies such as the BPKP/Inspectorate/Regional Apparatus Work Unit remain authorized to conduct inspections and audits of State financial management but are not authorized to declare state financial losses which must involve BK to calculate state losses. However, in certain cases, judges based on the facts of the trial can assess whether there has been a loss to the state and the amount of the loss to the state.

The aforementioned provision states that only one institution has the authority to calculate state losses. The problem is, in calculating state losses in several tax cases, the calculation of state losses is not carried out by BPK but by other parties, such as Public Accountants or Tax Auditors for cases of losses on state revenues. When the element of ‘state loss’ in a criminal case becomes the main element, the element of ‘state loss’ should be proven materially. Justice is what the Constitutional Court (MK) decided through decision no. 25/PUU-XIV/2016 relating to the review of the Corruption Law No. 31 of 1999 which

was amended by Law no. 21 of 2001, specifically stressing the word “can” in the formulation of Article 2 and Article 3 of the Corruption Law.

If real losses are not proven, the suspect must be acquitted. Moreover, calculating the real loss according to researchers is not easy. For example, the meaning of ‘loss’ in the insurance business must be understood by asking an insurance expert, so that it can be proven whether a business ‘loss’ can be equated with a ‘state loss’. That business can lose and can profit, is a common business fact.

We consider this with the example of LLC. Budi Tbk which is listed on the Exchange worth IDR 100 million. Then on 31-12-2018 the share price on the Exchange was recorded at IDR 80 million, even though the shares have not been sold. Ali is required to admit a loss of Rp. 20 million in the 2018 financial year. This is said to be a realized loss. If the calculation of state losses must be real (certain), there should not be even a single rupiah of miscalculation. If certain parties can prove a mistake in calculating a loss of one rupiah, the judge must acquit the party who can prove it.

Justice that is certain is the demand of all parties in the settlement of cases<sup>6</sup> both civil and criminal. Justice that is upheld according to law is justice that has certain values. The certainty lies in the amount of the loss calculation, not the calculation based on assumptions. The conflict between the meaning of justice and certainty becomes easy to understand if rational considerations are required in its implementation (Artadi, 2006). That is why the Constitutional Court’s decision No. 25/PUU-XIV/2016 is a law with rational considerations that are certain to be obeyed together. If so, the settlement of cases in SOE, including the settlement of the law on the SOE Jiwasraya case in the context of calculating state losses, must be aimed at providing legal correctness.

The legal phenomenon of SOEs managing public funds that are suspected of violating the law, such as the Jiwasraya SOE, is interesting and worthy of consideration, since the problem of managing public funds is an art of how to gain profits with the variety of investments offered and their derivations. At this point, trust becomes a bet on how profit and loss will be obtained by the owner of the funds. The essence of profit and loss can be assessed this from two perspectives, notably the legal side and the accounting side. The term “unrealized loss” in the accounting dictionaries is construed as an assessment that can result in prosecuting public fund managers. Therefore, the meaning of loss must be clear according to law. When a business is running, profit or loss is common in business. On the accounting side, the meaning of loss has a double meaning, realized loss and unrealized loss. In that case, the law separates the two meanings, otherwise it is very dangerous for business.

When corporations talk about profits and losses in business, profits and losses are subject to the realm of accounting according to the universal Financial Accounting Standards (SAK). Meanwhile, accounting profit and loss are flexible and dynamic, insofar as it is accounting that follows business, not business follows accounting. Then, how does the law assess the status of an unrealized loss? When a SOE is suspected of violating the law, the position of the loss must be clear, whether the loss is real or an apparent loss. The law, especially the criminal law which is based on a rigid philosophical footing, will talk about legal facts, similarly to real ones. The concept of ‘real’ is a legal fact which is interpreted as a definite nature which in law is said to have the value of certainty. Therefore, the concept of loss (state loss) in a criminal context must be real or real. While the apparent loss, still in the form of

notes on paper, has not actually occurred. If so, according to law, the proof must be real, not pseudo. So, accounting evidence with legal evidence is not the same. The accounting dictionary (SAK) is based on business and flexible, while law is rigid.

We shall now consider the situation when the SOE is an LLC. ABC has land assets worth IDR 2 billion and shares in PT. Telkom 1 billion, recorded on the profit and loss balance as of 31-12-2019. Due to certain conditions, the market price of land fell to Rp. 1.5 billion and the share value fell to Rp. 900 million, then the total assets of PT. ABC recorded a decrease of Rp. 600 million. Thus, it means the loss of LLC. ABC is called unrealized loss (apparent loss) because it hasn't really happened yet. The situation is different if the land is sold for IDR 1.5 billion, then a loss of IDR 500 million is true because the intention to sell and the land sale transaction has occurred. In that context, SOE losses must be separated between those that are unrealized losses and realized losses. Unrealized losses in shares contained in investment instruments traded on the Stock Exchange, in the record of assets can be seen in the share price, which every time the condition fluctuates. If the condition of the price drops, the accounting records show a decrease in the value of the asset, aka loss.

The legal issue is whether the apparent loss or actual loss is considered to have violated the law? Even if a real loss has occurred, the law cannot state that there has been a violation of the law. Losses are not due to breaking the law but due to certain conditions (legal market conditions). The law does not assess corporate (SOE) losses solely in the sense of state losses. As long as the concept of the business judgment rule is implemented by the Board of Directors, losses are not negative and are considered detrimental to the state. That is what happened to the case of Karen Agustiawan, which the researchers reviewed in the section above. Assessing losses from a legal standpoint must be done with caution so that SOE business parties are not 'imprisoned'. Business law is law that evaluates business over a long period of time. This year's loss may be able to provide profit in the next ten years, as long as careful calculations have been made. That is why the construction and legal substance must be understood for legal certainty. Business speed is often not followed by legal conditions (Ibrahim & Sewu, 2004). Therefore, a wise attitude is needed to assess losses from an accounting and legal perspective. Namely, the criminal aspect, so that there could no confusion in the implementation of the business run by SOE.

The context of loss in terms of taxation, for example, tax law already understands it. The term 'accounting profit' (in practice it is called 'commercial profit') is first adjusted to become 'fiscal profit' according to the norms of Article 6 and Article 9 of the Income Tax Law No. 36 of 2008, including 'commercial loss' to 'fiscal loss'. Consequently, the two are coherent. That's how taxes are enforced. When several SOEs were hit by legal cases, the law considered that there had been unlawful acts which resulted in state losses. At this point, according to the researcher, the central role lies with the Commissioner as stated in Article 64 of the Company Law.

Law is the yardstick for judging business interests. Legal judgments must be carried out in the context of business interests, and not in the context of law enforcement alone. Law enforcement on the will to punish, must be changed with legal judgments for mere business interests. Law enforcement must be implemented in a fair manner, since law enforcement as a specific law enforcement activity greatly influences legal satisfaction and legal benefits (Manan, 2009). While the legal assessment is an assessment of balance as well

as maximization of assessing a business that is run in the right way for the benefit of society, not just the interests of the business.

## CONCLUSIONS

Based on the description above, two things can be concluded as follows. The business run by the state through SOE based on Law no. 19 as of 2003 concerning SOE has contributed a lot to the expected results. However, problems arise in terms of legal risks to businesses run by SOEs, particularly with regard to legal norms which are often used as a basis in the context of law enforcement by law enforcement agencies. This is related to the formulation of norms, among others, regarding the notion of state losses, which do not have legal clarity even though they have been regulated in several laws.

In Karen's case, it is clear that there is a way of thinking of judges at the Supreme Court level who judge legal issues not solely on the formulation of norms, but on the meaning of legal doctrine that commonly occurs, namely the doctrine of business judgment rules. This gives a legal meaning that the legal treatment of SOEs is the same as the legal treatment of private companies by referring to UUPT No. 40 of 2007. Therefore, it is necessary to harmonize the two laws, both the SOE Law and the LLC Law, in order to reduce ambiguity in law enforcement. Second, the formulation of the norms required is regarding the elements of state losses and the parties who should carry out the calculation of state losses. This element is the main element of ensnaring perpetrators as a business risk incurred. Therefore, clarification through reformulating the norm of 'state loss' in several laws that regulated it is required.

In the context of law to implement justice and legal certainty, it is necessary to synchronize the SOE Law, LLC Law and the Corruption Law, so that in the future business people, SOE and private, could potentially avoid business risks, so as to provide certainty and order in business.

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